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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/862,642	05/22/2001	John Andrew Aiken JR.	5577-234	8726
<div>20792 7590 01/25/2008 MYERS BIGEL SIBLEY & SAJOVEC PO BOX 37428 RALEIGH, NC 27627</div> <div>EXAMINER CHANG, JUNGWON</div> <div>ART UNIT PAPER NUMBER 2154</div> <div>MAIL DATE DELIVERY MODE 01/25/2008 PAPER</div>				

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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 09/862,642

Filing Date: May 22, 2001

Appellant(s): AIKEN ET AL.

Elizabeth A. Stanek
For Appellant

EXAMINER'S ANSWER

This is in response to the reply brief filed on 11/02/2007. The reply brief has been entered and considered. In the reply brief, Appellants assert that "The Examiner

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maintains that responding to a connection request from a client is the same as "establishing the connection originated by an application executing on a data processing system" because "originating *the connection* does not necessarily require originating *the connection request*." See Examiner's Answer, page 14. Appellants respectfully submit that Webster's Dictionary defines the term originating as "initiating." Thus, Appellants maintain that the "Examiner's Interpretation" is not a reasonable interpretation of the claim recitations and ignores the plain language of the claims."

First, in response to appellant's arguments, the recitation "establishing a connection originated by an application executing on a data processing system" has not been given patentable weight because the recitation occurs in the preamble. A preamble is generally not accorded any patentable weight where it merely recites the purpose of a process or the intended use of a structure, and where the body of the claim does not depend on the preamble for completeness but, instead, the process steps or structural limitations are able to stand alone. See *In re Hirao*, 535 F.2d 67, 190 USPQ 15 (CCPA 1976) and *Kropa v. Robie*, 187 F.2d 150, 152, 88 USPQ 478, 481 (CCPA 1951).

Alteon explicitly discloses establishing a connection from the data processing system (i.e., web switch) executing an application (i.e., session) (Alteon, page 1, Overview, "as connection requests arrive for the virtual service, the web switch passes these requests on to one of the real servers...once the web switch assigns a session to a real server, it must recognize all successive packets associated with the session"; page 5, TCP/IP Server Load-Balancing Operation, "after performing the necessary

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address substitution, the web switch forwards the connection request to the chosen server...all subsequent packets belongs to that session undergo the same address substitution process..."; page 7, TCT Connection Monitoring, "*web switch* to send TCP connection request, i.e., TCP-SYN requests, to the real servers").

The examiner notes that as Appellant's claims are silent to an exact definition of "data processing system", the term may be interpreted to include a web switch. The definition of data processing system is "consisting of one or more computers and associated software, that uses common storage for all or part of a program and also for all or part of the data necessary for the execution of the program" from "Prentice Hall's Illustrated Dictionary of Computing", 1998. The examiner provides the reference as evidence to prove that is well known in the art.

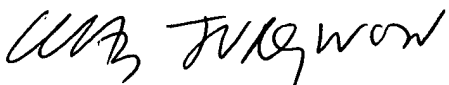
In addition, contrary to appellant's argument "session is not an application", the examiner finds that the "application" is interpreted as the "session" of Alteon, which runs and associates with the web switch and server. Page 1, 4th paragraph of Alteon states: web switches use protocol information in layers 3, 4 and above, such as URLs, TCP or UDP port numbers, the SYN/FIN bits that mark the start and end of **TCP application sessions** and IP source and destination addresses, to identify and manage **application-layer sessions** (also page 1, Overview; page 5, TCP/IP Server Load-Balancing Operation).

The session is an application layer concept for an exchange of packets between two endpoints, for which some network state is to be allocated or monitored. The definition of session is "In network architecture, for the purpose of data

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communication between functional units, all the activities which take place during the establishment, maintenance, and release of the connection" from "Prentice Hall's Illustrated Dictionary of Computing", 1998. The examiner provides the reference as evidence to prove that is well known in the art.

The examiner clarifies that the session is not the same as the connection. That is, the connection is a TCP connection established according to the TCP/IP protocols. As detailed in Alteon, the connection may then be associated with a session having a dynamic virtual IP address (DIVPA; page 5, "TCP/IP Server Load-Balancing Operation section, which recites that the same source address substitution occurs for packets traveling from the data processing system to the client"). If a session has not yet been established, a new one is created and a DIVPA is assigned. If a session has already been established, new connections from the same application or client will typically be assigned the same DIVPA that has already been established for the session, as determined by any of a variety of "persistence policies" detailed on pages 9-11 of Akeon. Here, the session is interpreted as the claimed "application".


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